

REMARKS / ARGUMENTS

The present application includes pending claims 1-36. Claims 1-36 are rejected under 35 USC 103(a) as allegedly being unpatentable over Yin et al. (US 5,982,748, hereinafter Yin), further in view of Cheng et al. (6,766,309, hereinafter Cheng).

The Applicant traverses the rejections and respectfully submits that the claims define patentable subject matter.

I. Rejection Under 35 U.S.C. § 103

In order for a *prima facie* case of obviousness to be established, the Manual of Patent Examining Procedure ("MPEP") states the following:

"First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the teaching. Second, there must be a reasonable expectation of success. Finally, the **prior art reference (or references when combined) must teach or suggest all the claim limitations**. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure."

See MPEP at § 2142, citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added). Further, MPEP § 2143.01 states that "the mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art suggests the desirability of the combination," and that "although a prior art device 'may be capable of being modified to run the way the apparatus is claimed, there must be a *suggestion or motivation in the reference to do so*'" (citing *In re Mills*, 916 F.2d 680, 16 USPQ 2d 1430 (Fed. Cir. 1990)). Moreover,

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MPEP § 2143.01 also states that the level of ordinary skill in the art cannot be relied upon to provide the suggestion...," citing Al-Site Corp. v. VSI Int'l Inc., 174 F.3d 1308, 50 USPQ 2d 1161 (Fed. Cir. 1999). Additionally, if a *prima facie* case of obviousness is not established, the Applicant is under no obligation to submit evidence of nonobviousness.

The examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness.
If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness.

See MPEP at § 2142.

A. The Proposed Combination of Yin and Cheng Does Not Render Claims 1-36 Obvious Or Unpatentable

The Applicant turns to the rejection of claims 1-36 by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Yin et al. (US 5,982,748 herein referred to as Yin) further in view of Cheng et al. (6,766,309, hereinafter Cheng).

A (1) Rejection of Independent Claims 1, 10, 19 and 28

With regard to the rejection of independent claim 1 under 35 U.S.C. § 103(a), the Applicant submits that the combination of Yin and Cheng does not disclose or suggest at least the limitation of "receiving ..., a first messaging protocol message containing quality of service (QoS) information," as recited in the Applicant's claim 1.

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With regard to claim 1, the Examiner asserts that Yin teaches the following:

"Yin discloses a method for providing network management in a local area network, the method comprising:
receiving from one or both of a first access point and/or a first switch, a first messaging protocol message containing quality of service (QoS) information (see column 5, lines 51-55, where a first messaging protocol message is considered a node sending a connection request containing QoS requirements to another node, where the node can be a switch see column 4, lines 29-34)"

See the Office Action in page 2. Specifically, the Examiner relies for support on the citation:

"a connection request is received containing various traffic parameters and QoS requirements for the requested connection. The connection request may be received from any node in the network coupled to the node performing this procedure."

See Yin in column 5, lines 51-55. The Examiner seems to equate Yin's "connection request containing various traffic parameters and QoS requirements for the requested connection" to read on "a first messaging protocol message containing quality of service (QoS) information," as recited in the Applicant's claim 1.

The Applicant respectfully disagrees and points out that there is no support in Yin that Yin's "connection request" is in fact a "messaging protocol message," as recited in Applicant's claim 1. The Applicant points out that the Examiner bears the initial burden to articulate the findings of fact (See MPEP at §

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2142) and to show that Yin's reference in fact discloses or suggests that the "connection request" is indeed a "messaging protocol message".

Subsequently, in view of the lack of evidence that Yin teaches that a "connection request" is the same as "a first messaging protocol message", the Applicant maintains that Yin does not disclose or suggest the limitation "receiving ..., a first messaging protocol message containing quality of service (QoS information," as recited in the Applicant's claim 1. Furthermore, Cheng does not overcome the above stated deficiencies of Yin.

Furthermore with regard to the rejection of claim 1, the Applicant submits that the combination of Yin and Cheng does not disclose or suggest at least the limitation of "distributing QoS information ... using a second messaging protocol message," as recited in claim 1 by the Applicant. The Examiner asserts that Yin teaches distributing QoS information ... using a second messaging protocol message and relies for support on Yin's citation in the following:

"If step 62 determines not to accept the connection request, request is rejected, and a corresponding **rejection signal is transmitted** to the switching device or node generating the connection request. If step 62 determines that adequate resources are available for the connection request, then the procedure continues to step 66 where the **connection request is accepted and sent to the next switching element or node in the network**. Those of ordinary skill in the art will appreciate that the next node in the network may be determined using a variety of routing mechanisms, routing protocols, or other route determination systems."

See Yin in column 6, lines 25-35 (emphasis added). The Examiner equates Yin's "sending of a rejection signal or accepting a connection request" to read on "distributing QoS information, ...using a second messaging protocol message," as recited in the Applicant's claim 1.

The Applicant respectfully disagrees and again points out that there is no support in Yin that Yin's "rejection signal or accepting a connection request" is in fact a "second messaging protocol message," as recited in Applicant's claim 1. For the same rational as stated above, the Applicant maintains that Yin does not disclose or suggest the limitation "**distributing QoS information, ...using a second messaging protocol message,**" as recited in the Applicant's claim 1. Furthermore, Cheng does not overcome the deficiencies of Yin in claim 1.

Accordingly, the Applicant submits that the combination of Yin and Cheng does not disclose or suggest at least the limitation of "receiving from one or both of a first access point and/or a first switch, a first messaging protocol message containing quality of service (QoS) information, ... distributing QoS information ... using a second messaging protocol message," as recited in the Applicant's claim 1. Consequently, a prima facie case of obviousness under 35 U.S.C. § 103(a) cannot be established in claim 1, and therefore claim 1 should be allowable. The Applicant respectfully requests that the rejection of independent claim 1 under 35 U.S.C. § 103(a) be withdrawn.

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With regard to the rejection of the independent claims 10, 19 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Yin further in view of Cheng, the Applicant points out that claims 10, 19 and 28 are similar in many respects to independent claim 1, and therefore, claims 10, 19 and 28 are also allowable for the same rationale as stated above with regard to claim 1. The Applicant respectfully requests that the rejection of claims 10, 19 and 28 be also withdrawn.

Furthermore, The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of the independent claims 1, 10, 19 and 28 should such a need arise.

A (2) Dependent Claims 2-9, 11-18, 20-27 and 29-36

Based on at least the foregoing, the Applicant believes the rejection of the independent claims 1, 10 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Yin further in view of Cheng has been overcome and should be allowable. Claims 2-9, 11-18, 20-27 and 29-36 depend directly or indirectly from the independent claims 1, 10, 19 and 28, and are, consequently, also respectfully submitted to be allowable and requests that the rejection under 35 U.S.C. § 103(a) be withdrawn.

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The Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of dependent claims 2-9, 11-18, 20-27 and 29-36 should such a need arise.

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CONCLUSION

Based on at least the foregoing, the Applicant believes that all pending claims 1-36 are in condition for allowance. If the Examiner disagrees, the Applicant respectfully requests a telephone interview, and requests that the Examiner telephone the undersigned Attorney at (312) 775-8093.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to the deposit account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

A Notice of Allowability is courteously solicited.

Respectfully submitted,

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